

## RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

Appendix A ... has been added to the 2017 LRB-6074

Appendix A ☞ LRB 17-5979  
Appendix B ☞ LRB 17-5982  
Appendix C ☞ LRB 17-5983  
Appendix D ☞ LRB 17-5985  
Appendix E ☞ LRB 17-5986  
Appendix F ☞ LRB 17-5989  
Appendix G ☞ LRB 17-5990  
Appendix H ☞ LRB 17-5995  
Appendix I ☞ LRB 17-5998  
Appendix J ☞ LRB 17-6001  
Appendix K ☞ LRB 17-6004  
Appendix L ☞ LRB 17-6006  
Appendix M ☞ LRB 17-6007  
Appendix N ☞ LRB 17-6012  
Appendix O ☞ LRB 17-6015  
Appendix P ☞ LRB 17-6017  
Appendix Q ☞ LRB 17-6019  
Appendix R ☞ LRB 17-6021  
Appendix S ☞ LRB 17-6023  
Appendix T ☞ LRB 17-6024  
Appendix U ☞ LRB 17-6025  
Appendix V ☞ LRB 17-6027

Appendix W ☞ LRB 17-6028  
Appendix X ☞ LRB 17-6031  
Appendix Y ☞ LRB 17-6036  
Appendix Z ☞ LRB 17-6037  
Appendix AA ☞ LRB 17-6038  
Appendix BB ☞ LRB 17-6039  
Appendix CC ☞ LRB 17-6040  
Appendix DD ☞ LRB 17-6041  
Appendix EE ☞ LRB 17-6042  
Appendix FF ☞ LRB 17-6043  
Appendix GG ☞ LRB 17-6046  
Appendix HH ☞ LRB 17-6047  
Appendix II ☞ LRB 17-6048  
Appendix JJ ☞ LRB 17-6049  
Appendix KK ☞ LRB 17-6050  
Appendix LL ☞ LRB 17-6051  
Appendix MM ☞ LRB 17-6052  
Appendix NN ☞ LRB 17-6058  
Appendix OO ☞ LRB 17-6059  
Appendix PP ☞ LRB 17-6065  
Appendix QQ ☞ LRB 17-6067

**2017 DRAFTING REQUEST**

**Bill**

For: **Joan Ballweg (608) 266-8077** Drafter: **mduchek**  
 By: **Bethany** Secondary Drafters:  
 Date: **11/12/2018** May Contact:  
 Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Ballweg@legis.wisconsin.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Codify Coyne decision, make DPI rules not subject to gov. approval

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 11/13/2018	wjackson 11/13/2018			
/P1			lparisi 11/13/2018		

FE Sent For: **<END>**

## Duchek, Michael

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**From:** Anderson, Bethany  
**Sent:** Monday, November 12, 2018 3:28 PM  
**To:** Duchek, Michael  
**Subject:** Re: Rules

Current session.

Sent from my iPhone

On Nov 12, 2018, at 3:22 PM, Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)> wrote:

Is this a request for the current (i.e., 2017-18) session or for next session (2019-20)?

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**From:** Anderson, Bethany  
**Sent:** Monday, November 12, 2018 3:20 PM  
**To:** Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)>  
**Subject:** Re: Rules

We're good on our end. Please move forward with the drafting request.

Thanks!  
Bethany

Sent from my iPhone

On Nov 12, 2018, at 1:51 PM, Anderson, Bethany <[Bethany.Anderson@legis.wisconsin.gov](mailto:Bethany.Anderson@legis.wisconsin.gov)> wrote:

This is great, thank you!

Can we start with the 3 pavers.

Sent from my iPhone

On Nov 12, 2018, at 1:45 PM, Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)> wrote:

1. Here is a link to the Coyne decision, where a divided court held that the gubernatorial approval of scope and final rule requirements can't be applied to DPI:  
[https://scholar.google.com/scholar\\_case?case=10721047486853195456&q=2016+WI+38&hl=en&as\\_sdt=4,50&as\\_vis=1](https://scholar.google.com/scholar_case?case=10721047486853195456&q=2016+WI+38&hl=en&as_sdt=4,50&as_vis=1)
2. Here is a link to WILL's page for the current litigation, in which they are essentially asking the court to reverse its decision in Coyne: <http://www.will-law.org/our-cases/good-government/koschkee-v-evers/#case-documents>

As to my history thing, I have a lengthy thing I put together and am still working on, which is about 30 pages long and isn't complete through

the present. I also have a 3 page document which basically condenses all of that into a single timeline. Let me know which of those is more along what you had in mind.

**Mike Duchek**  
**Senior Legislative Attorney**  
**Wisconsin Legislative Reference Bureau**  
**(608) 504-5830**



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5979/A 21

MED:...

Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT <sup>gc</sup>...; relating to: gubernatorial approval requirements for administrative  
2 rules <sup>c</sup>

*Analysis by the Legislative Reference Bureau*

Generally, under current law, an agency planning to promulgate an administrative rule, including an emergency rule, must first prepare a statement of the scope of the proposed rule (scope statement). A scope statement must be submitted to the Department of Administration for a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the scope statement. DOA must then report the statement and its determination to the governor who, in his or her discretion, may approve or reject the statement. Also under current law, after a proposed administrative rule, including an emergency rule, is in final draft form, the agency promulgating the proposed rule must submit the proposed rule to the governor, who may approve or reject the proposed rule. No agency may promulgate an administrative rule without the written approval of the governor.

In *Coyne v. Walker*, 2016 WI 38, the Wisconsin Supreme Court held that provisions requiring gubernatorial approval of the scope statements and rules are unconstitutional as applied to the Superintendent of Public Instruction, who heads the Department of Public Instruction.

Consistent with the result in *Coyne*, this bill exempts rules promulgated by the DPI from the requirements that a) a scope statement be submitted to DOA for a determination of authority and that the scope statement be approved by the governor

in final draft form

and b) a proposed rule be submitted to the governor and that the governor approve the rule in writing.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 227.135 (2) of the statutes is renumbered 227.135 (2) (a) 1. and  
2           amended to read:

3           227.135 (2) (a) 1. An Except as provided in subd. 2., an agency that has  
4           prepared a statement of the scope of the proposed rule shall present the statement  
5           to the department of administration, which shall make a determination as to  
6           whether the agency has the explicit authority to promulgate the rule as proposed in  
7           the statement of scope and shall report the statement of scope and its determination  
8           to the governor who, in his or her discretion, may approve or reject the statement of  
9           scope. The Except as provided in subd. 2., the agency may not send the statement  
10          to the legislative reference bureau for publication under sub. (3) until the governor  
11          issues a written notice of approval of the statement.

12          (b) The An agency that has prepared a statement of the scope of the proposed  
13          rule shall also present the statement to the individual or body with policy-making  
14          powers over the subject matter of the proposed rule for approval. The individual or  
15          body with policy-making powers may not approve the statement until at least 10  
16          days after publication of the statement under sub. (3) and, if a preliminary public  
17          hearing and comment period are held by the agency under s. 227.136, until the  
18          individual or body has received and reviewed any public comments and feedback  
19          received from the agency under s. 227.136 (5).

20          (c) No state employee or official may perform any activity in connection with  
21          the drafting of a proposed rule, except for an activity necessary to prepare the

1 statement of the scope of the proposed rule, ~~until the governor and the individual or~~  
2 ~~body with policy-making powers over the subject matter of the proposed rule~~  
3 ~~approve the statement~~ has been approved as required under pars. (a) and (b). This  
4 subsection paragraph does not prohibit an agency from performing an activity  
5 necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

History: 1995 a. 106; 2003 a. 118, 145; 2005 a. 249; 2007 a. 20; 2011 a. 21; 2013 a. 20, 165; 2017 a. 39, 57, 108.

NOTE: In *Coyne v. Walker*, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.

6 SECTION 2. 227.135 (2) (a) 2. of the statutes is created to read:

7 227.135 (2) (a) 2. The requirement under subd. 1. does not apply with respect  
8 to rules promulgated <sup>a statement of scope prepared</sup> by the department of public instruction.

9 SECTION 3. 227.135 (3) of the statutes is amended to read:

10 227.135 (3) ~~If the governor approves a~~ An agency that prepares a statement  
11 of the scope of a proposed rule under sub. (2), the agency (1) shall, subject to sub. (2)  
12 (a) 1., send an electronic copy of the statement to the legislative reference bureau,  
13 in a format approved by the legislative reference bureau, for publication in the  
14 register. On the same day that the agency sends the statement to the legislative  
15 reference bureau, the agency shall send a copy of the statement to the secretary of  
16 administration and to the chief clerks of each house of the legislature, who shall  
17 distribute the statement to the cochairpersons of the joint committee for review of  
18 administrative rules. The agency shall include with any statement of scope sent to  
19 the legislative reference bureau the date of the governor's approval of the statement  
20 of scope if such approval is required under sub. (2) (a). The legislative reference  
21 bureau shall assign a discrete identifying number to each statement of scope and

1 shall include that number and the date of the governor's approval, if required, in the  
2 publication of the statement of scope in the register.

History: 1995 a. 106; 2003 a. 118, 145; 2005 a. 249; 2007 a. 20; 2011 a. 21; 2013 a. 20, 165; 2017 a. 39, 57, 108.

NOTE: In *Coyne v. Walker*, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.

3 **SECTION 4.** 227.185 of the statutes is amended to read:

4 **227.185 Approval by governor.** After a proposed rule is in final draft form,  
5 the agency shall submit the proposed rule to the governor for approval. The governor,  
6 in his or her discretion, may approve or reject the proposed rule. If the governor  
7 approves a proposed rule, the governor shall provide the agency with a written notice  
8 of that approval. No proposed rule may be submitted to the legislature for review  
9 under s. 227.19 (2) unless the governor has approved the proposed rule in writing.  
10 The agency shall notify the joint committee for review of administrative rules  
11 whenever it submits a proposed rule for approval under this section. This section  
12 does not apply with respect to rules promulgated by the department of public  
13 instruction. *prepared by*

History: 2011 a. 21; 2017 a. 57.

NOTE: In *Coyne v. Walker*, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.

14 **SECTION 5.** 227.24 (1) (e) 1d. of the statutes is amended to read:

15 **227.24 (1) (e) 1d.** Prepare a statement of the scope of the proposed emergency  
16 rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.  
17 227.135 (2), send the statement to the legislative reference bureau for publication in  
18 the register as provided in s. 227.135 (3), and hold a preliminary public hearing and  
19 comment period if directed under s. 227.136 (1). If the agency changes the scope of  
20 a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare  
21 and obtain approval of a revised statement of the scope of the proposed emergency  
22 rule as provided in s. 227.135 (4). No state employee or official may perform any



1 activity in connection with the drafting of a proposed emergency rule<sup>3</sup> except for an  
2 activity necessary to prepare the statement of the scope of the proposed emergency  
3 rule until the governor approves the statement, if such approval is required, and the  
4 individual or body with policy-making powers over the subject matter of the  
5 proposed emergency rule ~~approve~~ approves the statement.

History: 1985 a. 182 ss. 6, 46, 55 (1), 57; 1985 a. 332 s. 253; 1987 a. 403; 1989 a. 31; 1995 a. 151; 1997 a. 185; 2003 a. 145; 2005 a. 249; 2007 a. 20; 2011 a. 21, 32, 46; 2013 a. 20, 165; 2017 a. 57, 364.

6 **SECTION 6. 227.24 (1) (e) 1g.** of the statutes is amended to read:

7 227.24 (1) (e) 1g. Submit the proposed emergency rule in final draft form to the  
8 governor for approval. The governor, in his or her discretion, may approve or reject  
9 the proposed emergency rule. If the governor approves a proposed emergency rule,  
10 the governor shall provide the agency with a written notice of that approval. An  
11 agency may not file an emergency rule with the legislative reference bureau as  
12 provided in s. 227.20 and an emergency rule may not be published until the governor  
13 approves the emergency rule in writing. This subdivision does not apply with respect  
14 to <sup>proposed</sup> emergency rules promulgated by the department of public instruction.

History: 1985 a. 182 ss. 6, 46, 55 (1), 57; 1985 a. 332 s. 253; 1987 a. 403; 1989 a. 31; 1995 a. 151; 1997 a. 185; 2003 a. 145; 2005 a. 249; 2007 a. 20; 2011 a. 21, 32, 46; 2013 a. 20, 165; 2017 a. 57, 364.

15 **SECTION 7. Initial applicability.**

16 (1) The treatment of ss. 227.135 (3), 227.185, and 227.24 (1) (e) 1d. and 1g., the  
17 renumbering and amendment of s. 227.135 (2), and the creation of s. 227.135 (2) (a)  
18 2. first apply to a proposed rule or emergency rule whose statement of scope is  
19 submitted to the legislative reference bureau for publication under s. 227.135 (3) on  
20 the effective date of this subsection.

21 (END)



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5979/P1  
MED:wlj

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to renumber and amend* 227.135 (2); *to amend* 227.135 (3), 227.185,  
2           227.24 (1) (e) 1d. and 227.24 (1) (e) 1g.; and *to create* 227.135 (2) (a) 2. of the  
3           statutes; **relating to:** gubernatorial approval requirements for administrative  
4           rules.

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***Analysis by the Legislative Reference Bureau***

Generally, under current law, an agency planning to promulgate an administrative rule, including an emergency rule, must first prepare a statement of the scope of the proposed rule (scope statement). A scope statement must be submitted to the Department of Administration for a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the scope statement. DOA must then report the statement and its determination to the governor who, in his or her discretion, may approve or reject the scope statement. Also under current law, after a proposed administrative rule, including an emergency rule, is in final draft form, the agency promulgating the proposed rule must submit the proposed rule to the governor, who may approve or reject the proposed rule. No agency may promulgate an administrative rule without the written approval of the governor.

In *Coyne v. Walker*, 2016 WI 38, the Wisconsin Supreme Court held that provisions requiring gubernatorial approval of scope statements and rules are unconstitutional as applied to the superintendent of public instruction.

Consistent with the result in *Coyne*, this bill exempts rules promulgated by the Department of Public Instruction from the requirements that a) a scope statement

be submitted to DOA for a determination of authority and that the scope statement be approved by the governor and b) a proposed rule in final draft form be submitted to the governor and that the governor approve the rule in writing.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       SECTION 1. 227.135 (2) of the statutes is renumbered 227.135 (2) (a) 1. and  
2       amended to read:

3       227.135 (2) (a) 1. An Except as provided in subd. 2., an agency that has  
4       prepared a statement of the scope of the proposed rule shall present the statement  
5       to the department of administration, which shall make a determination as to  
6       whether the agency has the explicit authority to promulgate the rule as proposed in  
7       the statement of scope and shall report the statement of scope and its determination  
8       to the governor who, in his or her discretion, may approve or reject the statement of  
9       scope. The Except as provided in subd. 2., the agency may not send the statement  
10      to the legislative reference bureau for publication under sub. (3) until the governor  
11      issues a written notice of approval of the statement.

12      (b) The An agency that has prepared a statement of the scope of the proposed  
13      rule shall also present the statement to the individual or body with policy-making  
14      powers over the subject matter of the proposed rule for approval. The individual or  
15      body with policy-making powers may not approve the statement until at least 10  
16      days after publication of the statement under sub. (3) and, if a preliminary public  
17      hearing and comment period are held by the agency under s. 227.136, until the  
18      individual or body has received and reviewed any public comments and feedback  
19      received from the agency under s. 227.136 (5).

1       (c) No state employee or official may perform any activity in connection with  
2       the drafting of a proposed rule, except for an activity necessary to prepare the  
3       statement of the scope of the proposed rule, ~~until the governor and the individual or~~  
4       ~~body with policy-making powers over the subject matter of the proposed rule~~  
5       ~~approve the statement~~ has been approved as required under pars. (a) and (b). This  
6       subsubsection paragraph does not prohibit an agency from performing an activity  
7       necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

8       **SECTION 2.** 227.135 (2) (a) 2. of the statutes is created to read:

9       227.135 (2) (a) 2. The requirement under subd. 1. does not apply to statements  
10      of scope prepared by the department of public instruction.

11      **SECTION 3.** 227.135 (3) of the statutes is amended to read:

12      227.135 (3) ~~If the governor approves a~~ An agency that prepares a statement  
13      of the scope of a proposed rule under sub. (2), ~~the agency (1) shall, subject to sub. (2)~~  
14      (a) 1., send an electronic copy of the statement to the legislative reference bureau,  
15      in a format approved by the legislative reference bureau, for publication in the  
16      register. On the same day that the agency sends the statement to the legislative  
17      reference bureau, the agency shall send a copy of the statement to the secretary of  
18      administration and to the chief clerks of each house of the legislature, who shall  
19      distribute the statement to the cochairpersons of the joint committee for review of  
20      administrative rules. The agency shall include with any statement of scope sent to  
21      the legislative reference bureau the date of the governor's approval of the statement  
22      of scope if such approval is required under sub. (2) (a). The legislative reference  
23      bureau shall assign a discrete identifying number to each statement of scope and  
24      shall include that number and the date of the governor's approval, if required, in the  
25      publication of the statement of scope in the register.

1       **SECTION 4.** 227.185 of the statutes is amended to read:

2       **227.185 Approval by governor.** After a proposed rule is in final draft form,  
3       the agency shall submit the proposed rule to the governor for approval. The governor,  
4       in his or her discretion, may approve or reject the proposed rule. If the governor  
5       approves a proposed rule, the governor shall provide the agency with a written notice  
6       of that approval. No proposed rule may be submitted to the legislature for review  
7       under s. 227.19 (2) unless the governor has approved the proposed rule in writing.  
8       The agency shall notify the joint committee for review of administrative rules  
9       whenever it submits a proposed rule for approval under this section. This section  
10      does not apply to proposed rules prepared by the department of public instruction.

11      **SECTION 5.** 227.24 (1) (e) 1d. of the statutes is amended to read:

12      227.24 (1) (e) 1d. Prepare a statement of the scope of the proposed emergency  
13      rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.  
14      227.135 (2), send the statement to the legislative reference bureau for publication in  
15      the register as provided in s. 227.135 (3), and hold a preliminary public hearing and  
16      comment period if directed under s. 227.136 (1). If the agency changes the scope of  
17      a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare  
18      and obtain approval of a revised statement of the scope of the proposed emergency  
19      rule as provided in s. 227.135 (4). No state employee or official may perform any  
20      activity in connection with the drafting of a proposed emergency rule, except for an  
21      activity necessary to prepare the statement of the scope of the proposed emergency  
22      rule, until the governor approves the statement, if such approval is required, and the  
23      individual or body with policy-making powers over the subject matter of the  
24      proposed emergency rule ~~approve~~ approves the statement.

25      **SECTION 6.** 227.24 (1) (e) 1g. of the statutes is amended to read:

227.24 (1) (e) 1g. Submit the proposed emergency rule in final draft form to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves a proposed emergency rule, the governor shall provide the agency with a written notice of that approval. An agency may not file an emergency rule with the legislative reference bureau as provided in s. 227.20 and an emergency rule may not be published until the governor approves the emergency rule in writing. This subdivision does not apply to proposed emergency rules of the department of public instruction.

## SECTION 7. Initial applicability.

(1) The treatment of ss. 227.135 (3), 227.185, and 227.24 (1) (e) 1d. and 1g., the renumbering and amendment of s. 227.135 (2), and the creation of s. 227.135 (2) (a) 2. first apply to a proposed rule or emergency rule whose statement of scope is submitted to the legislative reference bureau for publication under s. 227.135 (3) on the effective date of this subsection.

**(END)**